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Honorable Cathy Seibel
The Hon. Charles L. Brieant Jr. Federal Building
and United States Courthouse
300 Quarropas Street
White Plains, NY 10601-4150

RE: *Xinuos v. IBM., et al.*, No. 7:22-cv-09777-CS (S.D.N.Y.)

Dear Judge Seibel:

Plaintiff Xinuos, Inc. does not oppose Defendants IBM and Red Hat's request for oral argument on their Motion for Summary Judgment (D.I. 121) and Motion to Dismiss (D.I. 118). While Xinuos will gladly appear if Your Honor wishes, Xinuos suggests that Defendants' request is only further evidence of the unfairness and futility of their summary judgment motion at this time.

After failing to respond to Xinuos' copyright claim for almost two years, Defendants told the Court that it could be disposed of by early summary judgment – before discovery began – on the face of two unambiguous agreements. Instead of relying solely on those two agreements, Defendants filed a summary judgment motion with 54 exhibits, including documents Xinuos had never seen before. On reply, Defendants repeated the fiction that this case is about Project Monterey and not about Defendants' infringement of copyrighted works, advanced more new arguments, and then attached another 17 exhibits.

Before the Court are dueling affidavits, well over a thousand pages of exhibits, and 224 separately numbered paragraphs of *disputed* facts. Now Defendants tell the Court the record must be clarified and further explained on oral argument. And, of course, Defendants insist that during that time the Court must prevent Xinuos from taking discovery to challenge Defendants' allegations and, most especially, from obtaining access to *Defendants' source code to establish infringement*—which (unlike their motion) might actually foster or even prompt a speedy resolution to this dispute.

Respectfully submitted,

/s/ Gabriel M. Ramsey

Gabriel M. Ramsey

cc: All counsel of record (via ECF)